IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5438 of 2007()

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CRIME NO. 25/2005 OF THAMARASSERY EXCISE RANGE

PETITIONER/ACCUSED

THANKA, W/O.KRISHNAN, AGED 31 YEARS,
KALLADIKKUNNUMMEL HOUSE, PUDUPPADI AMSAM,
DESAM, KOZHIKODE DISTRICT.

BY ADV. SRI.LUIZ GODWIN D'COUTH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY EXCISE
INSPECTOR, THAMARASSERY EXCISE RANGE,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5438 of 2007

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Dated this the 10th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The petitioner, a woman was allegedly found to be in possession of 5 litres of arrack on 27.10.2005. The petitioner was not arrested by any official so far. The petitioner now apprehends imminent arrest. Investigation is complete. Final report has already been filed. The petitioner's application for anticipatory bail was dismissed by the learned Sessions Judge under Annexure A1 order. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In these circumstances, anticipatory bail may be granted to the petitioner, it is submitted. Investigation is complete. Final report has already been filed. Committal proceedings has been registered before the learned Magistrate.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is no circumstances justifying or warranting the invocation of extra ordinary equitable jurisdiction under Sec.438 Cr.P.C. This is a fit case where the petitioners must appear before the learned Magistrate or the investigating officer and seek regular bail in the ordinary course,

submits the learned Public Prosecutor.

3. I find merit in the opposition by the learned Public Prosecutor. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked even in a case where a person apprehends arrest in execution of processes issued by a Criminal court after cognizance has been taken. But, sufficient and satisfactory reasons must be shown to exist. I find no such reasons

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously- on the date of surrender itself.

(R.BASANT, JUDGE)

sj